

NORTH CAROLINA GENERAL ASSEMBLY



LEGISLATIVE STUDY COMMISSION ON STATE CONSTRUCTION INSPECTIONS

Co-chairs:
Representative Bill Owens
Senator Stan Bingham

**REPORT
TO THE
2007 GENERAL ASSEMBLY**

JANUARY 2007

The Legislative Study Commission on State Inspections respectfully submits the following report.

Representative Bill Owens
Co-Chair

Senator Stan Bingham
Co-Chair

COMMITTEE PROCEEDINGS

The Legislative Study Commission on State Construction Inspections held its initial meeting on November 2, 2006. The focus of this first meeting was to provide the Commission with an overview of the State's plan review and construction inspection process. Presenters were drawn from the primary State agencies delegated inspection and plan review responsibility for the construction and renovation of State buildings.

Presentations began with representatives from the State Construction Office (SCO) within the Department of Administration. Gregory Driver, Chief of the SCO and Bill Davis, Assistant Director for the Design Review Section of the SCO, outlined the mission and function of the SCO. The Department of Administration is charged under the statutes with the coordination and management of the State's capital improvement program. Through the SCO, the Department assists agencies in developing their requests for appropriations for capital improvements, supervises the letting of contracts for the design and construction of state buildings, reviews and approves construction plans and specifications, and supervises and inspects the work and materials used in the construction or renovation process. G.S. 143-341. Construction inspections focus on compliance with plans and specifications, construction progress, performance, system operation, and good workmanship. The SCO is the only agency that conducts a comprehensive review of an entire state construction project to ensure value for taxpayer dollars and successful completion of the project in compliance with all statutory requirements.

The Department of Insurance (DOI) was represented by Wayne Goodwin, Assistant Commissioner and Assistant State Fire Marshall, and Jim Roberts, Chief Code Consultant. DOI is charged with the review of State building plans for compliance with the North Carolina State Building Code with a focus on life safety issues. DOI is also required to review certain categories of private building projects for code compliance. In addition to its plan review and approval duties, DOI is charged with inspecting all state properties at least annually for fire safety. DOI also performs the electrical inspections for State buildings, to determine compliance with the National Electric Code.

As part of their presentation, the DOI representatives also addressed some of the concerns that had been raised by The University of North Carolina and other owner agencies regarding review times. Factors contributing to delays in plan approval included a surge in workload created by the 2000 Higher Education Bond Program, the transition to the new International Building Code in 2002 and 2003, the poor quality of design submittals and the varied response time from design teams. Efforts have been made by the Department to reduce backlog by increasing staff, establishing an express line for small projects, focusing on a priority list from the University of North Carolina General Administration, providing more planning assistance and scheduling conference reviews for eligible projects with tight schedules.

Jonathon Brooks, Bureau Chief of the Elevator and Amusement Device Bureau spoke on behalf of the Department of Labor. The DOL is charged with elevator inspections

across the State, both public and private, and with the review of construction applications with elevator installations.

Jim Lora, Assistant Budget Officer for Capital Projects in the Office of State Budget and Management spoke to the Commission about the work being done on the six year capital plan. Good advance planning is critical to the streamlining of the State construction process. Delays created by lack of advance planning contribute significantly to increased project costs. In addition, he noted that most agencies do not have permanent professional architectural and engineering staff to perform comprehensive advanced planning, project design or project management.

Lastly, Speros Fleggas, Deputy Secretary for Government Operations, Department of Administration, gave his perspective on the construction planning, review and inspection process. He noted that a good review is critical to the design and construction process and can catch mistakes that otherwise would have to be corrected during and post construction. Mr. Fleggas recommended more accountability from owning agencies and designers, more staff and resources for reviewing agencies, and a requirement that out-of-state designers be required to associate with an in-state design firm.

For its December 6, 2006 meeting, the Commission invited State agencies with large or numerous capital projects to present their viewpoint of the State's plan review and construction inspection process. Presentations were made to the Commission by The University of North Carolina (the University), the Department of Health and Human Services (DHHS), the Department of Environment and Natural Resources (DENR), the Department of Cultural Resources, and, by letter, the Department of Corrections (DOC).

Speaking for the University, Rob Nelson, Vice President of Finance, noted that capital projects under two million dollars were exempt from review by the SCO. All University building projects, however, are required by law to be reviewed by DOI for code compliance, especially life safety issues. Among its critical concerns, the University mentioned inconsistency in code interpretations between different reviewers and between plan review personnel and inspection personnel and the amount of time required to complete plan reviews. Delays in the DOI review process can drive project costs up by millions of dollars due to inflation. The University offered a number of recommendations for streamlining the review and inspections process including allowing independent reviews, delegating a level of plan review to institutions based on technical expertise and competency, encouraging face-to-face meetings especially in instances of resubmittals, early field visits to resolve interpretation questions, better coordination of the review and inspection processes, the establishment of objective measures of performance for process participants, and continuation (and expansion) of the quarterly interagency meetings that promote better collaboration on projects.

Terry Hatcher, Director, Division of Property and Construction for DHHS was recognized next. DHHS owns 900 buildings across the State. Most of the buildings were constructed prior to 1960. The Department currently has over 140 projects

ongoing with a value of more than \$640 million, most of these are health care facilities. At least four of these projects exceed \$100 million in construction costs. Mr. Hatcher noted that extended design review times contribute to inflationary increases in project costs. He would like to see a complete overhaul of the State capital construction process as a long term goal. The focus of his concerns was the length of time for DOI reviews. He suggested limiting DOI reviews to critical life safety issues only, transferring DOI's electrical inspections of State buildings to SCO, allowing owner agencies with licensed architects and engineers on staff to assume plan review accountability for small projects and increasing the number of face-to-face plan reviews. He further suggested an increase in the informal bid project threshold from \$300,000 to \$500,000, allowing agencies to independently select designers for projects under \$500,000, and making designer interviews optional on projects under \$1 million.

Bruce Garner, Chief of Design and Development, Division of Parks and Recreation, DENR, presented the Commission with his Division's capital improvement project activity list. According to Mr. Garner, the owner agency is the key player in the process. Each agency should have an in-house task force. He also suggested rewarding contractors for completing construction early. Bo Henderson, Capital Projects Director for DCR noted that a majority of the Department's projects are under \$1 million. He supports the suggestion of additional personnel at DOI and raising the ceiling on designer selection.

At the December 6 meeting, the Commission also heard perspectives on the State construction process from engineers, architects, and general contractors. Valoree Eikanas, P.E. noted that DOI is overworked and understaffed. She said it would be helpful when making design changes to have the designers present with the owning agencies and reviewers working as a team. Chuck Wilson of CT Wilson Contractors indicated that that he could not address the design review process, but noted that DOI does not have enough inspectors and on occasion it is necessary to take subcontractors off jobs while waiting on inspections. Irvin Pearce, of Pearce, Brinkley, Cease, and Lee Architecture spoke about the increasing complexity of the building code. He also noted that some agencies (local) will do express reviews for private industry for a charge. Additional personnel are needed at the review agencies to speed up the process.

At the conclusion of the December 6 meeting, the Chairs of the Commission directed staff to facilitate a workgroup composed of the stakeholder agencies and interested professional groups to see if consensus could be reached on a list of recommendations to improve the construction plan review and inspections process. The Stakeholder Workgroup met on December 13, 2006, December 20, 2006 and January 8, 2007. As a result of those meetings, a list of consensus recommendations was put before the Commission at its third meeting on January 18, 2007. At that meeting, the Commission discussed the findings and recommendations of the Stakeholder Workgroup and voted to adopt them as part of the Commission's report to the 2007 General Assembly.

The last meeting of the Commission was held on January 23, 2007. The Commission voted to add a recommendation to the report directing the State Building Commission to

work with owning agencies and review/inspection agencies to develop a standard set of time measurements for the design process and construction process. After a brief discussion of all the recommendations and the proposed legislation, the Commission voted to adopt the report and forward it to the 2007 General Assembly.

FINDINGS AND RECOMMENDATIONS

The Study Commission heard from a variety of stakeholders, including State owning agencies, the construction review agencies, designers, and general contractors. The Study Commission focused its attention on the work performed by the State agencies that perform reviews and State inspections of State capital projects. The following are findings and recommendations from the Study Commission

The Value of Review/Inspection Agencies and Owning Agencies

Salient through the discussion of the Study Commission was the importance of the review/inspection agencies and owning agencies. The Study Commission found:

- Stakeholders agreed that review/inspection agencies perform an important role in protecting the life and safety of the users of State facilities. Review/inspection agencies also support State agencies in the budgetary control of capital projects.
- Review/inspection agencies provide general third-party support to agencies. Owning agencies are under significant pressure to deliver capital projects. The pressure comes from the General Assembly, governing boards, and agency administrators. The review/inspection agencies provide an independent "back-stop" to capital program administrators in the owner agencies.
- Owning agencies are the linchpin for managing and delivering capital projects. Owning agencies enter into the contracts with designers and general contractors and are responsible for managing the contract from the State's perspective. The success of the project hinges on the owning agency's ability to manage the project. It is in the State's interest to ensure owning agencies are positioned to properly manage their contracts.

Accountability

Through course of its work, the Study Commission heard concerns from various parties about whether the current design and construction process holds the various stakeholders accountable for their obligations in the process. Specifically, the Commission found:

- The State Building Commission established general review times for planning purposes and the State Construction Office placed those review times in the State Construction Manual. These times are for planning purposes of the designers. As for the rest of the design process, clear time expectations are not established for owning agencies or design firms. Stakeholders agreed that developing a clear set of time expectations would be difficult to arrive at, since the circumstances for each capital project vary greatly. There is still interest in developing clear expectations among the parties.

- Review/inspection agencies, owning agencies, and design firms all collect data regarding review times. Stakeholders showed some interest in standardizing the measures and measuring all participants.
- A source of delay cited by the review/inspection agencies happens after comments are sent to the designer of a project, but significant time passes before the comments are addressed in the plan documents. Many reasons have been offered for this delay with the designer, but for some projects, slow response to the review agencies' comments can stall the project.
- For some projects, the designers are responsive, but disagree with the review agencies. These disagreements can drag on and slow the design process. Stakeholders agreed that owning agencies were responsible for managing their designers and need to be included in the correspondence between the review agencies and the designers.
- Owning agencies raised the issue of consistent interpretation of the code from the review agencies. Types of consistency raised include code interpretation between reviewers in a single agency, between reviewers and inspectors, and between different reviewing agencies. The Department of Insurance discussed several initiatives to help with code interpretation, including a code checklist that the Department of Insurance is developing, and the addition of code interpretation information on the Department of Insurance's website. The Department of Insurance also discussed needing to coordinate code interpretation between the reviewers and the inspectors. Also, the Department of Insurance is seeking to increase awareness of acceptable alternatives to standard code.

Recommendation #1 - Direct the State Building Commission to examine the design process and establish/modify/reiterate guidelines and expectations for the design of State facilities and plans review. *See, Legislative Proposal 1*

Recommendation #2 - Direct the State Building Commission to look at the State's standard design contract for opportunities to strengthen accountability between the owning agencies and design firms. *See, Legislative Proposal 1*

Recommendation #3 - Direct the State Building Commission to consider other vehicles for establishing clear expectations in the process, such as memoranda of understanding between owning agencies and review agencies. *See, Legislative Proposal 1.*

Recommendation #4 - Direct the State Building Commission to examine the State Construction Manual for opportunities to increase accountability for all parties. *See, Legislative Proposal 1.*

Recommendation # 5 - Direct the State Building Commission to determine whether review agencies have sufficiently formalized and documented their review standards and processes. Direct State Building Commission to oversee any improvements by State agencies in this area of concern. *See, Legislative Proposal 1.*

Recommendation #6 – Direct the State Building Commission to work with owning agencies and review/inspection agencies to develop a standard set of time measurements for the design process and construction process. The State Building Commission should also consider other standard measures of performance by the owning agencies, review/inspection agencies, designers, and builders. *See, Legislative Proposal 1.*

Recommendation #7 – Direct the State Building Commission to establish an evaluation system for owning agencies and review agencies similar to that extant for designers and general contractors. *See, Legislative Proposal 1.*

Recommendation #8 - Recommend that the Quarterly Stakeholders Group consisting of the University of North Carolina – General Administration, the State Construction Office, and the Department of Insurance continue meeting and expand in membership. All departmental agencies should be invited to participate. The State Construction Office should be responsible scheduling the initial meeting and inviting the participants. The Stakeholder Group can then determine its structure and future work. The Quarterly Stakeholders Group should make routine semi-annual reports to the State Building Commission.

Recommendation #9 – The State Building Commission should use the Quarterly Stakeholders Group as the working group for achieving greater efficiency and effectiveness in the State's capital improvement process. The State Building Commission should require semi-annual reports from the Quarterly Stakeholders Group.

Recommendation #10 - Through the Quarterly Stakeholders Group, the review/inspection agencies should continue addressing questions of consistency in the review and inspections Processes.

Communications

One of the perceived barriers to improving the capital improvement process was the current state of communications between the owner agencies, review/inspection agencies, designers, and builders. Through its work, the Study Commission found:

- As stated earlier, a source of delay cited by the review/inspection agencies happens after comments are sent to the designer of a project, but significant time passes before the comments are addressed in the plan documents.
- For some projects, the designers are responsive, but disagree with the review agencies. These disagreements can drag on and slow the design process.
- The stakeholders agreed that owning agencies were responsible for managing their designers. The responsibility includes managing non-responsive and argumentative designers. The stakeholders agreed that owning agencies need to be included in all correspondence between the review/inspection agencies and the designers.

- The stakeholders discussed the value of face-to-face meetings between review/inspection agencies, owning agencies, and designers. Such face-to-face reviews are currently possible through the State Construction Office and the Department of Insurance, depending on the project and available resources. The stakeholders emphasized the importance of face-to-face meetings for project planning purposes, for project re-submittals, and for final comment resolution. Both the Department of Insurance and the State Construction Office are committed to using face-to-face meetings to increase communications with owning agencies and designers, but owning agencies need to reach out to the review/inspection agencies. Greater use of face-to-face meetings will require additional resources in the review agencies.
- Owning agencies expressed concern about getting feedback from the review/inspection agencies, particularly from Department of Insurance, about code compliance issues for repair and renovation projects prior to developing a project budget. The workgroup discussed having a planning meeting between the appropriate review agencies and the owning agencies prior to developing and submitting the certified cost estimate for a capital project. This planning meeting would not be necessary, but at the request of the owning agency.
- As stated earlier, owning agencies raised the issue of consistent interpretation of the code from the review agencies. Types of consistency raised include code interpretation between reviewers in a single agency, between reviewers and inspectors, and between different reviewing agencies. The Department of Insurance is implementing several initiatives, discussed earlier in the report, to achieve greater consistency within the department and offer more guidance to owning agencies, designers, and builders.

Recommendation #11 - Review agencies will copy the owning agencies on correspondences with designers, including letters and email. The owning agencies and the review agencies need to update the contact lists for the owning agencies. In most cases the contact will be the Capital Projects Coordinator(s) for the owning agency, but some agencies may need to designate other persons to be copied.

Recommendation #12 - Recommend to the State Building Commission that the designer's email address be included as a required element of the State's standard design contract. *See, Legislative Proposal 1.*

Recommendation #13 - Encourage review/inspection agencies, owning agencies, and designers to use face-to-face meetings. The types of face-to-face meetings that could be use include:

- Project planning meetings for scheduling, code, constructability and cost issues. Meetings could also determine reduced requirements for plan review.
- Project re-submittal meetings to discuss plan comments from the review/inspection agencies to the designers. Designers could present corrections, and all parties could to these meetings to resolve comments for difficult projects.

- Final comment resolution meetings.

Recommendation #14 - Encourage owning agencies to contact the Department of Insurance prior to estimating the budget for renovation projects with potential code issues.

Recommendation # 15 – Encourage review/inspection agencies to coordinate office visits from owning agencies and designers so that such meetings can occur on the same day.

Owner Agency Flexibility

In light of Senate Bill 192 from the 2006 Session of the 2005 General Assembly, the Study Commission discussed providing the owning agencies greater autonomy in the design and construction process. Through its deliberations, the Study Commission found:

- The stakeholders discussed the potential for increased flexibility or delegation of review functions to the owner agencies. For example, the three-phase review could be reduced to one review for all projects or certain types of projects. The State Construction Office explained to the Study Commission and the other stakeholders that the review/inspection agencies are charged with oversight functions by general statute. Plan review could be formally reduced in scope, but at the expense of oversight. While the State Construction Manual directs designers to submit plans at each of the three design phases to the State Construction Office and the Department of Insurance, the review/instruction agencies can reduce the scope of reviews at will. Projects can and often get reviewed at design development and sometimes only at construction documents.
- The stakeholders discussed greater flexibility for owning agencies regarding the Department of Insurance plan review. Owning agencies discussed Department of Insurance exemption for small projects. The Department of Insurance explained for the Study Commission and other stakeholders that projects with small dollar amounts frequently have code issues. Many of these projects are renovation projects in State buildings that no longer meet code requirements. Instead, the Department of Insurance has recently implemented express review for small projects. The purpose is to segregate small projects plans and move them rapidly through the review process. Owning agencies also discussed allowing State agencies to take their buildings to local code officials. According to the Department of Insurance, very few local jurisdictions are authorized to perform this level of plan review. Lastly, owning agencies discussed the hiring private contract reviewers to perform plan review. The Department of Insurance discussed the potential conflict-of-interest for contract reviewers. Through the contract, private reviewers would be expected to enforce the State Building Code for the same owning agencies paying the contract.
- The stakeholders raised the issue that various statutes governing agency autonomy from the design and construction oversight process have not been changed in several years. With construction inflation increasing the cost of small projects, fewer projects qualify for the statutory flexibility afforded owning agencies.

- The stakeholders discussed raising the statutory ceiling for Informal Contracts. With this change, owning agencies can pursue more small construction projects without using the formal public bidding requirements. The ceiling is currently \$300,000. By avoiding the formal public bidding process, a greater number of small projects could be efficiently placed under contract.
- The stakeholders also discussed raising the floor for requiring a surety for construction projects. The floor has been historically tied to the ceiling for informal contracts, which is \$300,000. By raising the bonding floor, the State could increase the market of available contractors for small projects. Owning agencies would be free to still require bonding for complex projects.
- The stakeholders discussed raising the statutory ceiling for agency designer selection. The current statute sets the limit at \$100,000 for State agencies, \$300,000 for the University of North Carolina, and \$300,000 for community colleges. The current statute includes certain restrictions for the university and the community colleges. The stakeholders also discussed raising the current limits to \$500,000 for State agencies, the University, and for community colleges.

Recommendation #16 – Raise the statutory floor for formal contracts from \$300,000 to \$500,000. *See, Legislative Proposal 1.*

Recommendation #17 – Increase the statutory bonding requirement to projects greater than \$500,000. The requirement is currently at \$300,000. *See, Legislative Proposal 1.*

Recommendation #18 – Increase the statutory limit for agency designer selection from \$100,000 to \$500,000 for State agencies, the University of North Carolina and community colleges. The current statutory requirements for the University of North Carolina and the community colleges regarding agency designer selection should be removed. *See, Legislative Proposal 1.*

Training

Through the course of its work, the Study Commission examined the need for training for State agencies, designers, and builders about aspects of the review and inspection processes. Given the critical role that owning agencies play in managing the construction process, owning agency personnel responsible for the construction of State facilities must have a strong handle on the review and inspection processes.

The Study Commission also heard from stakeholders about designers submitting plans that do not meet State Building Code. Many reasons were offered for why such plans might be submitted, including designers that are not sufficiently familiar with State codes; designers relying on review/inspection agencies to perform the final office examination of plans;

North Carolina's recent change to the International Building Code; and disagreement between designers and the Department of Insurance over code interpretation. The Department of Insurance, through guideline checklists and their website, is trying to communicate the Department's expectations to designers and owning agencies. The purpose of these initiatives is to reduce the amount conflict over interpretation of the building code. The stakeholders raised the concern that the Department of Insurance does not currently offer general code instruction for owning agency personnel and designers. The community colleges offer building code instruction for code officials, but owning agencies stated that code official classes delve deeper into the subject matter than is appropriate for their personnel. Owning agencies are interested in high level instruction on the State Building Code and also stated that designers might benefit from the continuing education opportunity.

Recommendation #19 – Owning agencies identify the training needs of their capital program administrators and connect them with training opportunities in the Department of Administration.

Recommendation #20 – Department of Insurance develop general training opportunities for owning agency personnel and designers on the State Building Code.

Resource Needs in Review/Inspection Agencies

The Study Commission heard from owning agencies, designers, builders, and the review/inspection agencies about various resource needs of the review/inspection agencies. Through the course of its work, the Study Commission found:

- When the General Assembly authorizes capital projects, very little attention is paid to the impact of those capital projects on the general government agencies responsible for supporting and overseeing those projects.
- In discussing the impact of the 2000 Higher Education Bonds, the impact of the Bonds on the review/inspection agencies was covered several times. The review/inspection agencies raised the concern that they're workload and workflow is impacted by large capital authorizations by the Legislature, but these authorizations do not address anticipated impacts to the review agencies. The stakeholders agreed that impacts to the review agencies should be included in the State's Capital Improvement Program and in large capital authorizations by the General Assembly. Several ideas were discussed, such as indirect cost charges on capital projects, or administrative costs added to projects. The workgroup recognized the challenge of implementing such charges. Capital funds are non-recurring and any such charges would not provide the recurring funds necessary to establish permanent positions. Time-limited positions would be difficult to fill.
- Department of Insurance has code reviewers looking at both private and public facilities. The Department is considering establishing procedures for shifting reviewers between the private and public review operations to address workload surges. Private and public

reviewers are funded from the General Fund, so the source of funds should not be a barrier to establishing such procedures.

- The review/inspection agencies presented the need for market studies performed by Office of State Personnel for engineer and architect position classes. The State Construction Office is struggling to hire reviewers/inspectors. The State Construction Office believes that their salary ranges are not competitive with the private sector and other State agencies, such as the University of North Carolina. According to State Construction Office, they have consulted with the Department of Administration personnel office and have been informed that such a market studies could be years away. The State Construction Office was also part of the career banding initiative that was halted last year by the General Assembly. The Department of Insurance and the State Construction Office also raised the concern that open positions for engineers and architects are being budgeted at the salary range minimums. To attract experienced applicants from the private sector, positions need to be budgeted at the midpoint of the salary range.
- The stakeholders discussed the general need for more positions in the review agencies to tackle the existing workflow of projects and to implement more services, such as face-to-face meetings. In addition to State Construction Office and the Department of Insurance, the workgroup discussed the potential need for additional resources and requirements for the other review agencies (the Department of Health and Human Services, the Department of Environment and Natural Resources, the Department of Labor, etc.). For instance, the workgroup discussed the need for these other review agencies to formalize their review standards and processes. These other review agencies need to make sure that there's sufficient documentation so that owner agencies and designers understand the review standards and processes.

Recommendation #21 – The Department of Insurance should explore opportunities and establish procedures for maximizing both the private and public code reviewers to address workload surges.

Recommendation #22 – Direct the Office of State Personnel to work with the Department of Administration, the Department of Insurance, and other review/inspection agencies to perform market studies of engineer and architect position classifications. *See, Legislative Proposal 1.*

Recommendation #23 – The Capital Improvement Program in OSBM and large capital improvement authorizations by the General Assembly should recognize and address impacts to the review/inspection agencies.

Recommendation #24 – Support the request for additional positions in the State Construction Office if included in the Governor's Recommended Budget for the Department of Administration for FY 2007-09.

Recommendation #25 – Support the Department of Insurance's request for six additional review positions and two electrical inspection positions. The purpose of the

new review positions is to achieve targeted reviews times, implement new services, and provided ongoing training activities for owner agencies and designers. The electrical inspector positions will provide the Department with the necessary resources to inspect State buildings within acceptable timeframes. *See, Legislative Proposal 1.*

The State Building Commission Reports

The State Building Commission has significant authority to oversee and intervene in the State's capital improvement program. Through the recommendations of the Study Commission, the State Building Commission is tasked to examine certain aspects of the design and construction process and take any necessary actions to achieve greater efficiency and effectiveness. The Study Commission recognizes that the State Building Commission is a logical central location through which the recommendations of this Study Commission could be organized and overseen.

The Study Commission also recognizes that the Quarterly Stakeholders Group could be an excellent resource for the State Building Commission to achieve many of the recommendations of this Study Commission. The Study Commission purposefully did not establish the Quarterly Stakeholders Group in law, so that the Group could remain nimble in membership and purpose. Although the Quarterly Stakeholders Group is not established in law, the Study Commission strongly encourages the State Building Commission to see that the Group meets and reports to the State Building Commission regularly. The Study Commission also recommends that the State Building Commission engage the Quarterly Stakeholders Group and participate in the Group's work. In order to ascertain that the Study Commission's recommendations are pursued, the Study Commission recommends that the State Building Commission report back to the General Assembly regarding the implementation of the recommendations of the Study Commission.

Recommendation #26 – Direct the State Building Commission to report back to the Joint Legislative Committee on Governmental Operations, the Joint Legislative Oversight Committee on Capital, the Appropriations Committees of the House and Senate, and the Fiscal Research Division of the General Assembly regarding the implementation of the Study Commission's recommendations. *See, Legislative Proposal 1.*

PROPOSED LEGISLATION

LEGISLATIVE PROPOSAL I

A BILL TO BE ENTITLED

AN ACT TO IMPROVE THE STATE CAPITAL FACILITIES PROGRAM BY DIRECTING THE STATE BUILDING COMMISSION TO REVIEW THE PROGRAM AND IMPLEMENT MEASURES TO REDUCE DELAYS AND INCREASE ACCOUNTABILITY AMONG THE PARTIES TO THE DESIGN AND CONSTRUCTION PROCESS, BY INCREASING THE BIDDING, BONDING AND DESIGNER SELECTION THRESHOLDS FOR STATE CONSTRUCTION CONTRACTS, BY DIRECTING THE STATE PERSONNEL OFFICE TO CONDUCT A MARKET STUDY OF ARCHITECT AND ENGINEERING POSITION CLASSIFICATIONS, AND BY APPROPRIATING FUNDS FOR ADDITIONAL PLAN REVIEW AND ENFORCEMENT PERSONNEL AT THE DEPARTMENT OF INSURANCE.

Whereas, delays in the completion of State capital improvement projects that occur during designer selection, the construction plan review process, construction, and the construction inspection process can result in millions of dollars in increased construction costs due to inflation; and

Whereas, the State Building Commission was created within the Department of Administration to direct and guide the State's capital facilities development and management program; and

Whereas, the State Building Commission has the responsibility for establishing the criteria for and overseeing designer selection for State facilities, adopting rules coordinating the plan review, approval, and permit process for State capital improvements, and studying and recommending ways to improve the effectiveness and efficiency of the State's capital facilities development and management programs; and

Whereas, greater clarity, coordination, and accountability among the agencies responsible for the examination of plans and specifications for the construction and renovation of State facilities and for the construction inspections of those facilities, the owning agencies/institutions as defined in the State Construction Manual, designers and contractors could reduce these delays and facilitate the timely completion of such projects resulting in significant dollars savings to the State; and

Whereas, the influx of project reviews occasioned by the 2000 Higher Education Bond Act created serious workload and resource issues for the State Construction Office and the Department of Insurance; and

Whereas, costly delays in the plan review and inspections process for State construction projects are occurring in part due to the inability of the State to attract qualified architects and engineers to conduct such reviews and inspections and there are no plans at this time for a State Personnel Office market study of architect and engineering positions, Now therefore,

The General Assembly of North Carolina enacts:

SECTION 1. The State Building Commission shall examine the State capital improvement process and shall establish or modify, as necessary, the guidelines for the selection of designers and the rules governing the design, plan review and inspection of State building projects. In carrying out its examination and proposing and modifying its guidelines and rules, the Commission shall consult with all of the State departments involved in the capital improvement process, including (i) the agencies responsible for the examination of plans and specifications for the construction and renovation of State facilities and for the supervision and inspection of all work done and materials used in the construction or renovation of State facilities ("review and inspection agencies"), (ii) the owning agencies/institutions as defined in the State Construction Manual ("owning agencies"), (iii) the Board of Governors of The University of North Carolina, and (iv) the State Board of Community Colleges. In carrying out the provisions of this section the Commission shall:

(1) Examine the State Construction Manual for opportunities to increase the accountability of all parties to the State capital improvement process.

(2) Determine whether the review and inspection agencies have sufficiently formalized and documented their review standards and processes.

(3) Oversee the proper documentation of review standards and processes where necessary.

(4) Facilitate the establishment of clear expectations for all parties to the process including the owning agencies, review and inspection agencies, designers and contractors. The Commission shall work with owning agencies and review and inspection agencies to develop a standard set of time measurements for the design process and the construction process and shall consider the development of other standard measures of performance for all the parties to the design, review, inspection, and construction process.

(5) Review the State's standard design contract for opportunities to strengthen the accountability of design firms to the owning agencies. In particular, the Commission shall consider the inclusion of a designer's email address as a requirement of the standard design contract.

SECTION 2. The State Building Commission shall file an interim report on or before April 30, 2008, and a final report on or before December 31, 2008, with the Joint Legislative Commission on Governmental Operations, The Joint Legislative Oversight Committee on Capital, the Appropriations Committees of the House and Senate, and the Fiscal Research Division of the General Assembly. The report shall cover the activities of the Commission in implementing the provisions of Section 1 of this act and any recommendations to improve the coordination and efficacy of the design, review, inspection, and construction process. The report also shall cover the implementation of the recommendations from the Legislative Study Commission on State Construction Inspections including:

(1) Efforts to include owning agencies on all correspondence between review and inspection agencies, designers, and contractors.

(2) Implementation of new services by review and inspection agencies, including the use of face to face meetings.

(3) The impact of any statutory changes providing State agencies with greater flexibility in design and construction contracts.

SECTION 3. The State Personnel Office shall, work with the Department of Administration, the Department of Insurance, and other State agencies employing architects

and engineers to perform a market study of architect and engineer salaries and position classifications. The State Personnel Office shall complete the study as soon as possible, but in no event later than six months from the effective date of this section.

SECTION 4. G.S. 143-129(a) reads as rewritten:

"(a) Bidding Required. – No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more five hundred thousand dollars (\$500,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than ninety thousand dollars (\$90,000) may be performed, nor may any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any political subdivision of the State, unless the provisions of this section are complied with.

For purchases of apparatus, supplies, materials, or equipment, the governing body of any political subdivision of the State may, subject to any restriction as to dollar amount, or other conditions that the governing body elects to impose, delegate to the manager, school superintendent, chief purchasing official, or other employee the authority to award contracts, reject bids, or readvertise to receive bids on behalf of the unit. Any person to whom authority is delegated under this subsection shall comply with the requirements of this Article that would otherwise apply to the governing body."

SECTION 5. G.S. 44A-26(a) reads as rewritten:

"(a) When the total amount of construction contracts awarded for any one project exceeds five hundred thousand dollars (\$500,000) a performance and payment bond as set forth in (1) and (2) is required by the contracting body from any contractor or construction manager at risk with a contract more than fifty thousand dollars (\$50,000). In the discretion of the contracting body, a performance and payment bond may be required on any construction contract as follows:

- (1) A performance bond in the amount of one hundred percent (100%) of the construction contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. Such bond shall be solely for the protection of the contracting body that is constructing the project.
- (2) A payment bond in the amount of one hundred percent (100%) of the construction contract amount, conditioned upon the prompt payment for all labor or materials for which a contractor or subcontractor is liable. The payment bond shall be solely for the protection of the persons furnishing materials or performing labor for which a contractor, subcontractor, or construction manager at risk is liable.

SECTION 6. G.S. 143-64.34 reads as rewritten:

"§ 143-64.34. Exemption of certain projects.

State capital improvement projects under the jurisdiction of the State Building Commission, capital improvement projects of The University of North Carolina, and community college capital improvement projects, where the estimated expenditure of public money is less than five hundred thousand dollars (\$500,000) are exempt from the provisions of this Article.

SECTION 7. There is appropriated from the General Fund to the Department of Insurance the sum of seven hundred seventy seven thousand three hundred eighty six dollars (\$777,386) for the 2007-2008 fiscal year and the sum of seven hundred twenty nine thousand three hundred eighty six dollars (\$729,386) for the 2008-2009 fiscal year to establish one building systems engineer III position, five building systems engineer II positions, and two State Building Code enforcement officer positions.

SECTION 8. Sections 1, 2 and 3 of this act are effective when they become law. Sections 4, 5, and 6 are effective when they become law and apply to projects that are funded by the General Assembly on or after July 1, 2007. Section 7 of this act becomes effective July 1, 2007.

APPENDICES

APPENDIX A

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

SESSION LAW 2006-248

HOUSE BILL 1723

PART XV. STUDY COMMISSION ON STATE CONSTRUCTION INSPECTIONS (Owens; S.B. 192 – Hagan)

SECTION 15.1. There is created the Legislative Study Commission on State Construction Inspections. The Commission shall consist of 14 members appointed as follows:

- (1) Five voting members appointed by the Speaker of the House of Representatives, one of whom is also a member of the Higher Education Bond Oversight Committee.
- (2) Five voting members appointed by the President Pro Tempore of the Senate, one of whom is also a member of the Higher Education Bond Oversight Committee.
- (3) Four nonvoting ex officio members as follows or their designees: the Commissioner of Labor, the Commissioner of Insurance, the Secretary of Administration, and the Secretary of Health and Human Services.

The Speaker of the House of Representatives and the President Pro Tempore of the Senate shall each appoint a cochair for the Commission. The appointing authority shall fill vacancies. The Commission shall meet upon the call of the cochairs.

SECTION 15.2. The Commission shall study the following:

- (1) The scope and nature of each type of inspection of private and public construction projects performed or required by State agencies.
- (2) The extent to which State inspections overlap with inspections performed by local governments.
- (3) The total cost of the State's inspection of public and private construction projects.
- (4) The comparative efficiencies and efficacies of each type of inspection of private and public construction projects performed or required by State agencies to determine whether:
 - a. The inspections can be combined to save the costs of administration and to limit any hardships on public and private entities engaged in construction projects.
 - b. Any inspections should be otherwise modified in scope or eliminated.
- (5) The level of training of the various inspectors in the State agencies and whether the training is satisfactory for the types of inspections performed.

- (6) Whether changes in the process to review plans submitted to and approved by the Commissioner of Insurance and the Department of Administration could enhance cost savings and promotion of one-time completion of projects.
- (7) Any other matter related to increasing the efficiency and efficacy of the State's inspection of public and private construction projects.

SECTION 15.3. The Commission may contract for consultant services as provided by G.S. 120-32.02. Upon approval of the Legislative Services Commission, the Legislative Services Officer shall assign professional and clerical staff to assist in the work of the Commission. Clerical staff shall be furnished to the Commission through the offices of the House of Representatives' and the Senate's Directors of Legislative Assistants. The Commission may meet in the Legislative Building or the Legislative Office Building upon the approval of the Legislative Services Commission. Members of the Commission shall receive per diem, subsistence, and travel allowances at the rate established in accordance with G.S. 120-3.1, 138-5, and 138-6, as appropriate. The Commission, while in the discharge of its official duties, may exercise all the powers provided under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4, including the power to request all officers, agents, agencies, and departments of the State to provide any information, data, or documents within their possession, ascertainable from their records, or otherwise available to them, and the power to subpoena witnesses.

SECTION 15.4. The Commission may report its findings, conclusions, and recommendations, including any legislative proposals by the convening of the 2007 General Assembly. The Commission shall expire on that date, or upon filing its final report, whichever occurs earlier.

SECTION 15.5. Of the funds appropriated to the General Assembly, the Legislative Services Commission shall allocate funds for the expenses of the Commission established by this Part.

APPENDIX B

North Carolina General Assembly
**Legislative Study Commission on State Construction
Inspections (2005)**
UnExpired Positions Only

SL2006-248 sec. 15.1

Pro Tem's Appointments

Sen. Stan Bingham
North Carolina Senate
16 W. Jones Street, Room 2117
Raleigh, NC 27601-2808
(919) 733-5665
Co-Chair

Sen. Kay R. Hagan
North Carolina Senate
300 N. Salisbury Street, Room 411
Raleigh, NC 27603-5925
(919) 733-5856
Member

Sen. Eleanor Gates Kinnaird
North Carolina Senate
16 W. Jones Street, Room 2115
Raleigh, NC 27601-2808
(919) 733-5804
Member

Mr. Paul Davis Boney
Member
2328 Independence Blvd, Suite 200
Wilmington, NC 28412
Public Member

Mr. William G. Smith
Member
Mutual Community Savings Bank
315 East Chapel Hill Street
Durham, NC 27702
Public Member

Speaker's Appointments

Rep. William Clarence Owens Jr.
North Carolina House of Representatives
300 N. Salisbury Street, Room 635
Raleigh, NC 27603-5925
(919) 733-0010
Co-Chair

Rep. Carolyn Hewitt Justice
North Carolina House of Representatives
300 N. Salisbury Street, Room 301-C
Raleigh, NC 27603-5925
(919) 715-9664
Member

Rep. Henry M. Michaux Jr.
North Carolina House of Representatives
16 W. Jones Street, Room 1227
Raleigh, NC 27601-1096
(919) 715-2528
Member

Mr. Joddy Peer
112 South Tryon Street
Charlotte, NC 28284
Public

Lt.Gen. William Thurman ret
10 Firestone Drive
Pinehurst, NC 28374
Public

Governor's Appointments

Officio

Other's Appointments

Hon. Cherie Killian Berry
Commissioner of Labor
4 West Edenton Street
Raleigh, NC 27601-1092
(919) 733-0359
Ex

Legislative Study Commission on State Construction Inspections (2005)

UnExpired Positions Only

| | | |
|---------|--|----|
| Officio | Hon. W. Britt Cobb Jr. Secretary of Administration Mail Service Center Raleigh, NC 27699 | Ex |
| Officio | Hon. Carmen Hooker-Odom Secretary of Health and Human Services 2001 Mail Service Center Raleigh, NC 27699 (919) 733-4534 | Ex |
| Officio | Hon. James E. Long Commissioner of Insurance 430 N. Salisbury Street Raleigh, NC 27603 919-733-7343 | Ex |

Staff to Committee

Contact

Jim Klingler, Fiscal Analyst
Fiscal Research Division
919-733-4910

Barbara Riley, Staff Attorney
Research Division
919-733-2578

Ann Jordan, Committee Clerk
919-733-5746